

PATENT



Docket No. 1232-4475US1

A. Jones
Election
#4 B/17/B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Y. MARUYAMA, et al.
Serial No. : 09/729,701 Art Unit : 3729
Filed : December 6, 2000 Examiner : A. TUGBANG
For : VIBRATION TYPE DRIVING APPARATUS

RESPONSE TO ELECTION OF SPECIES REQUIREMENTS

COMMISSIONER OF PATENTS
Washington, D.C. 20231

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TECHNOLOGY CENTER R3700

Sir:

Kindly consider the following election in response to the February 10, 2003 election of species requirements.

ELECTION:

The Examiner, in the Office Action dated February 10, 2003, required election of one of the following species:

Species I - Claims 1-13, drawn to a mold; or

Species II - Claims 14-22; drawn to a mesophased pitch carbon fiber.

No claim was identified as being generic between Species I and Species II.

In the event Applicants elected Species I, the Examiner required a further election to one of the following sub-species of:

Species A, drawn to heating, Claims 2 and 6;

Species B, drawn to a press forming method, Claims 3 and 7;

Species C, drawn to ultrasonic working, Claim 4; and

Species D, drawn to a ridgeline portion (Figure 3), Claims 8-12.

Claims 1, 5, and 13 were identified as being generic within Species I.

Applicants respectfully traverse the above election of species requirements as being improper and request withdrawal thereof.

Section 803 of the Manual of Patent Examining Procedure (MPEP) indicates that “there are two criteria for restriction between patentably distinct inventions” as follows (emphasis added) to wit:

- “(A) The inventions must be independent...; and,
- (B) There must be a serious burden on the examiner if restriction is not required....”

Applicants respectfully submit that Species I (Claims 1-13) and Species II (Claims 14-22) are properly presented in the same application and that no serious burden on the Examiner exists.

The Examiner has not provided any evidence or line of reasoning to show that the identified species are independent and that a serious burden exists. As such, the Examiner has not satisfied the two criteria identified in Section 803 of the MPEP. Notwithstanding any actual independence or distinction between the identified species, Section 803 of the MPEP requires examiners to search and examine application containing independent or distinct invention when no serious burden to do so exists. Section 803 of the MPEP also states that:

“If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.”

Response To Election of Species Requirements

The Examiner has not provided any specific discussion, line of reasoning, and/or evidence to support his conclusion that a serious burden, in fact, exists.

In view of the above discussion, it is respectfully submitted that the election of species requirement is improper and should be withdrawn. Accordingly, action on the merits for Species I and Species II is respectfully requested.

Notwithstanding the above discussion, Applicants hereby elects Species II, Claims 14-22. Applicants, nonetheless, reserve the right to file divisional applications based on the non-elected species and claims.

AUTHORIZATIONS:

The Commissioner is hereby authorized to charge any additional fees which may be required for the timely consideration of this amendment, or credit any overpayment to Deposit Account No. 13-4500, Order No. 1232-4475US1.

Respectfully submitted,
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